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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2003

DEIDRA DIANE VINSON-UPSHUR
4313 W. 59TH Place
Los Angeles, California 90043

A C C U S A T I O N

Respiratory Care Practitioner License No. 4143

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about June 14, 1985, the Respiratory Care Board issued Respiratory Care Practitioner License Number 4143 to Deidre Diane Vinson-Upshur (Respondent). This license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2005, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references

1 are to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
4 the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and
6 revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3750 of the Code states:

8 “The board may order the denial, suspension or revocation of, or the imposition of
9 probationary conditions upon, a license issued under this chapter, for any of the following
10 causes:

11 “ . . .

12 “(d) Conviction of a crime that substantially relates to the qualifications, functions,
13 or duties of a respiratory care practitioner. The record of conviction or a certified copy
14 thereof shall be conclusive evidence of the conviction. . . .”

15
16 7. Section 3752 of the Code states:

17 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
18 made to a charge of any offense which substantially relates to the qualifications, functions,
19 or duties of a respiratory care practitioner is deemed to be a conviction within the meaning
20 of this article. The board shall order the license suspended or revoked, or may decline to
21 issue a license, when the time for appeal has elapsed, or the judgment of conviction has
22 been affirmed on appeal or when an order granting probation is made suspending the
23 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the
24 Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of
25 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
26 indictment.”

27 8. Section 3755 of the Code states:

28 “The board may take action against any respiratory care practitioner who is charged

1 with unprofessional conduct in administering, or attempting to administer, direct or indirect
2 respiratory care. Unprofessional conduct includes, but is not limited to, repeated acts of
3 clearly administering directly or indirectly inappropriate or unsafe respiratory care
4 procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques,
5 and violation of any provision of Section 3750. The board may determine unprofessional
6 conduct involving any and all aspects of respiratory care performed by anyone licensed as
7 a respiratory care practitioner.”

8 9. Section 490 of the Code states:

9 “A board may suspend or revoke a license on the ground that the licensee has been
10 convicted of a crime, if the crime is substantially related to the qualifications, functions, or
11 duties of the business or profession for which the license was issued. A conviction within
12 the meaning of this section means a plea or verdict of guilty or a conviction following a
13 plea of nolo contendere. Any action which a board is permitted to take following the
14 establishment of a conviction may be taken when the time for appeal has elapsed, or the
15 judgment of conviction has been affirmed on appeal, or when an order granting probation
16 is made suspending the imposition of sentence, irrespective of a subsequent order under the
17 provisions of Section 1203.4 of the Penal Code.”

18 10. California Code of Regulations, Title 16, section 1399.370, states:

19 “For the purposes of denial, suspension, or revocation of a license, a crime or act
20 shall be considered to be substantially related to the qualifications, functions or duties of a
21 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
22 perform the functions authorized by his or her license or in a manner inconsistent with the
23 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
24 those involving the following:

25 “ . . .

26 “(c) Conviction of a crime involving driving under the influence or reckless driving
27 while under the influence. . . .”
28

1 COST RECOVERY

2 11. Section 3753.5, subdivision (a) of the Code states:

3 "In any order issued in resolution of a disciplinary proceeding before the board, the
4 board or the administrative law judge may direct any practitioner or applicant found to
5 have committed a violation or violations of law to pay to the board a sum not to exceed the
6 costs of the investigation and prosecution of the case."

7 12. Section 3753.7 of the Code states:

8 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
9 include attorney general or other prosecuting attorney fees, expert witness fees, and other
10 administrative, filing, and service fees."

11 13. Section 3753.1, subdivision (a) of the Code states:

12 "An administrative disciplinary decision imposing terms of probation may include,
13 among other things, a requirement that the licensee-probationer pay the monetary costs
14 associated with monitoring the probation."

15 CAUSE FOR DISCIPLINE

16 (Conviction of a Crime)

17 14. Respondent is subject to disciplinary action under sections 3750,
18 subdivision (d), 3752 and 490 of the Code, and California Code of Regulations, Title 16, section
19 1399.370, subdivision (c), in that she was convicted of a crime substantially related to the
20 qualifications, functions or duties of a respiratory care practitioner. The circumstances are as
21 follows:

22 A. On or about May 18, 2005, in a criminal proceeding entitled *People*
23 *v. Deidre Diane Vinson-Upshur*, in Superior Court, Los Angeles County, Case Number
24 4SM03868, respondent was convicted by a plea of nolo contendere to the crime of reckless
25 driving with no injury, a violation of Vehicle Code section 23103.

26 B. On or about May 18, 2005, respondent was placed on probation for
27 two years. The terms and conditions of her probation included payment of \$1,086.00 in
28 fines, and completion of a 12-hour alcohol program.

1 C. The facts and circumstances surrounding this offense are as follows:

2 At about 5:40 a.m. on July 20, 2004, a Santa Monica police officer
3 responded to a report of a person passed out in a vehicle which was stopped in the middle
4 of the road. The vehicle's engine was running, the break lights were on, and there was
5 substantial damage. Respondent was passed out in the driver's seat with her hands in her
6 lap and her right foot pressing on the brake pedal. When the police officer opened the door
7 of the vehicle, respondent opened her eyes and appeared disoriented. While talking to
8 respondent, the officer detected an odor of alcohol on her breath, and he observed that her
9 eyes were glassy and bloodshot and her speech was slurred. When asked if she had been
10 drinking, she said she had a glass of wine at 4:00 p.m. As she stepped out of her vehicle,
11 she had poor balance and coordination. During questioning, she appeared disoriented and
12 confused, and gave different answers to the same question. She failed the field sobriety
13 tests. Respondent had in her possession several pills which were later identified as
14 Darvocet, a narcotic analgesic, Syclo Benzaprime, a muscle relaxer, and Atenolol, a blood
15 pressure medication.

16 Respondent was arrested and charged with driving under the influence of
17 alcohol/ drugs, a violation of Vehicle Code section 23152, subdivision (a).

18 SECOND CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct)

20 15. Respondent is subject to disciplinary action under section 3755 of the Code,
21 in that she engaged in unprofessional conduct in her practice as a respiratory care practitioner. The
22 circumstances are as follows:

23 A. On or about July 19, 2004, respondent was assigned to work at
24 Daniel Freeman Hospital through Associated Health Professionals, Inc., a registry. She
25 was scheduled to work the evening shift from 7:00 p.m. until 7:00 a.m. on July 20, 2004.
26 At about 3:00 a.m., respondent was paged twice to report to the emergency room to treat
27 an asthmatic patient. Respondent failed to respond to the pages. The emergency room
28 nurse informed her supervisor, who located respondent in the respiratory therapy room

1 talking on her cell phone. The supervisor asked her to report to the emergency room
2 immediately. When the supervisor received another call that the patient had not been
3 treated, she went back to the respiratory therapy room where she found respondent still
4 talking on her telephone. She again asked respondent to report to the emergency room.
5 After respondent went to the emergency room, the nurse complained to her supervisor that
6 respondent's speech was slurred. When the supervisor asked her how she felt, respondent
7 said she was "light headed." When she was asked if she was taking any medication,
8 respondent did not answer. Since she was not feeling well, the supervisor told her to go
9 home. Respondent left before arrangements could be made to take her home.

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

- 13 1. Revoking or suspending Respiratory Care Practitioner License Number
14 4143, issued to Deidre Diane Vinson-Upshur;
- 15 2. Ordering Respondent to pay the Respiratory Care Board the costs of the
16 investigation and enforcement of this case, and if placed on probation, the costs of probation
17 monitoring;
- 18 3. Taking such other and further action as deemed necessary and proper.

19 DATED: October 20, 2005
20
21

22 Original signed by Liane Zimmerman for:
23 STEPHANIE NUNEZ
24 Executive Officer
25 Respiratory Care Board of California
26 Department of Consumer Affairs
27 State of California
28 Complainant